IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 461 OF 2004
IN
NOTICE OF MOTION NO.1183 OF 2002
IN
SUIT NO.1367 OF 2002

Mrs.Rekhaben Sirish Karia .. Appellant

v/s.

1. Pushpaben Dhirubhai Khakhar &
ors. .. Respondents

Mr.Sachin Mandlik i/by M/s.Udwadia & Udeshi for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 1st September, 2004

P.C.

Heard.

2. The plaintiff has preferred this appeal aggrieved by the order dated 3rd March, 2004 whereby the learned motion Judge declined prayer for appointment of Receiver.

3. In para 7 of the impugned order, the learned motion Judge observed thus-

> "7. The defendants have produced on record a copy of the will dated 28th July 1986 allegedly executed by the deceased alongwith an affidavit of one of the attesting witness namely Kishore Ramji Popat. In view of this, it cannot be said that the plaintiff has a present right of dispossessing the defendants. Even assuming that there is no will, the plaintiff at best would be entitled to only

> 1/8th share, waste of the property is not proved and in such circumstance, I am not inclined to appoint a receiver. Hence, the prayer for appointment of Court Receiver is rejected."

4. In the intestate succession to the estate of the deceased the plaintiff claims only 1/8th share in the subject property. The defendants in opposition to the notice of motion taken out by the plaintiff set up the will dated 28th July, 1986 said to have been executed by the deceased. It appears that so far no steps have been taken by the concerned legatee or executor of the will in obtaining the probate. However we are satisfied that plaintiff's right in the estate of the deceased is adequately and sufficiently protected by the restraint order presently. The impugned order, therefore, does not call for any interference.

5. If the concerned legatee/executor does not take appropriate steps in applying for probate or letters of administration of the will within reasonable time, the plaintiff shall be entitled to apply afresh for the appointment of Court Receiver and in that event such application shall be considered by the motion Judge on its own merits.

6. With the aforesaid observation, appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)